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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Marie-Christine MISSANA et al

Group Art Unit: 3738

Serial No : 09/980,120
(U.S. National Phase of PCT/FR00/01457)

Examiner: D. J. Isabella

Filed : November 30, 2001
(I.A. Filed May 29, 2000)

For : BREAST PROSTHESIS

**PETITION REQUESTING REVERSAL OF THE OBJECTION TO THE
DRAWING AMENDMENT FILED MAY 9, 2002**

Commissioner For Patents
PO Box 1450
Alexandria, Virginia 23313-1450

Sir:

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This petition is being filed concurrently with an Appeal Brief appealing the Examiner's final rejection of April 2, 2003.

Applicant is uncertain whether the objection to the drawings is petitionable or appealable. Accordingly, Applicant is concurrently filing this petition to have the objection to the drawings overruled. Should it be determined that this objection is within the jurisdiction of the Board, Applicant has requested resolution of this matter on Appeal. On the other hand, if the Board lacks jurisdiction in this matter, Applicant hereby requests that this matter be resolved by petition.

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Applicant submits that this petition should be considered as timely even though it is being filed more than two months from the date of the Final rejection, i.e., more than two months from April 2, 2003. Specifically, this petition should be considered to be timely filed because of the jurisdictional uncertainty of the drawing objection, i.e., whether this issue is properly appealable to the Board or petitionable, and because the M.P.E.P. appears to provide no guidance on the issue of jurisdiction.

The Objection to the Drawings Under 37 C.F.R. section 1.121(f), as Lacking Support in the Original Disclosure is in Error, the Examiner's Decision to Object to the Drawings Should be Reversed, and the Application Should be Remanded to the Examiner.

Reversal of the objection to the drawings under 37 CFR 1.121(f), as lacking support in the original disclosure is requested.

The Examiner asserts that the drawings filed May 9, 2002 lack support in the original disclosure. In particular, the Examiner explained that there is no support in the original disclosure for the character lines χ' and α' .

Applicant respectfully disagrees and submits that the drawings are fully supported by the original disclosure and are in full compliance with current USPTO rules.

As explained in the Interview of July 31, 2003, and as was apparently acknowledged

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by the Examiner, Fig. 6 and page 7, lines 26-30 of the original specification provide clear support for complementary angles χ and χ' . Moreover, page 8, lines 19-24 provides clear support for complementary angles α and α' .

With regard to angles α and α' , Applicant notes that page 7, lines 26-30 of the original disclosure states with reference to Fig. 5, "Therefore, one easily sees that the posterior surface 51 has a uniform concavity extending between the points k and C. This concavity can be quantified by the distance GG' which is greater than 1 cm, and by the **angles α** formed by the planes tangent to the posterior surface 51, **at points k and C**, with the plane P4. Here, the **two angles on the outer and inner side are substantially identical** (about 25°, which can be comprised between 20° and 30°), **but it could be otherwise.**" (Emphasis Added).

Moreover, Applicant has previously amended the specification consistent with these changes to the drawings. Thus, the paragraph between lines 25-34 of page 7 has been amended as follows:

"Therefore, one can easily [sees] see that the posterior surface 51 has a uniform concavity extending between the points k and C. This concavity can be quantified by the distance GG['] which is greater than 1 cm, and by the angles α and α' formed by the planes tangent to the posterior surface 51, at points k and C, with the plane P4. Here, the two angles α and α' on the outer and inner side are substantially identical (about 25°, which can be [comprised] in the range of between 20° and 30°), but it could also be otherwise. It can be

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noted that G['] is not in the middle of kC. There is an A[']G/G[']C ratio of about 0.75 (for example [comprised] in the range of between 0.5 and 1). The hatched area 53 corresponds to the outer overlap designated by the reference numeral 44 in the previous Figure[; it]. This makes it possible to see more clearly that the prosthesis allows obtaining the natural effect of an outwardly projecting breast.” See Appendix 7 of the Second Preliminary Amendment.

With regard to angles χ and χ' , Applicant notes that page 8, lines 19-23 of the original disclosure states with reference to Fig. 6, “The posterior surface 51 has a second concavity in the plane of the Figure. This concavity can be quantified by the distance HH' which is greater than 1 mm, and by the **angles χ** formed by the plane tangent to the posterior surface 51 at point B with the plane P9. **(The situation is the same at point D', the concavity extending from B up to D'). Here, the angle χ is about 7°, and can be comprised between 4° and 15°, for example.**” (Emphasis Added).

Moreover, Applicant has previously amended the specification consistent with these changes to the drawings. Thus, the paragraph between lines 19-23 of page 8 has been amended as follows:

“The posterior surface 51 has a second concavity in the plane of the Figure. This concavity can be quantified by the distance HH['] which is greater than 1 mm, and by the [angles] angle χ formed by the plane P10 tangent to the posterior surface 51 at point B with the plane P9. (The situation is the same [at] on the other side near point [D'] D' with regard

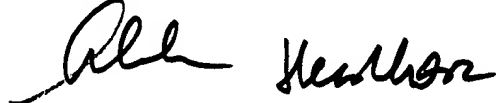
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to angle χ' , the concavity extending from B up to D['']). Here, the [angle] angles χ and χ' [is] are each about 7° , and can be [comprised] in the range of between 4° and 15° , for example." See Appendix 8 of the Second Preliminary Amendment.

Thus, Applicant submits that the noted drawing changes find clear and full support in the original disclosure. For reasons given above, reversal of the Examiner's decision to finally object to the drawings as lacking support in the original disclosure is requested.

Applicant submits that no fee is required for resolution of the instant petition. However, the Commissioner is authorized to charge any required or additional fee, or to credit any overpayment, to Deposit Account No. 19-0089.

Respectfully submitted,
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